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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	Maurice Haman ABRAHAM et al.)	Examiner:	David E. ENGLAND
)		
)	Art Unit:	2143
Serial No.:	10/005,898)		
)	Our Ref:	B-4358 619258-8
Filed:	November 2, 2001)		30012959-2 US
)		
For:	"APPARATUS AND METHOD FOR WORKFLOW")	Date:	November 15, 2006
)		
)	Re:	<i>Appeal to the Board of Appeals</i>

BRIEF ON APPEAL

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the rejection dated June 19, 2006, for the above identified patent application. Appellants submit that this Appeal Brief is being timely filed because the Notice of Appeal was filed on September 19, 2006. Please deduct the amount of \$500.00 for the fee set forth in 37 C.F.R. 1.17(c) for submitting this Brief from deposit account no. 08-2025.

REAL PARTY IN INTEREST

The real party in interest to the present application is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences related to the present application.

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CONCLUSION

For the many reasons advanced above, Appellants respectfully contend that each claim is patentable and reversal of all rejections and allowance of the case is respectfully solicited.

I hereby certify that this correspondence is being deposited with the United States Post Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

November 15, 2006

(Date of Transmission)

Alma Smalling

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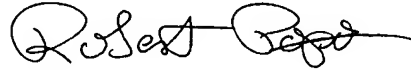
(Signature)

11/15/06

(Date)

Attachments

Respectfully submitted,



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STATUS OF CLAIMS

Claims 1-9 are the subject of this Appeal and are reproduced in the accompanying Appendix A.

STATUS OF AMENDMENTS

No Amendment After Final Rejection has been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

The invention claimed in claim 1 is directed to a computer apparatus (100) for implementing a workflow defined by a sequence in which activity nodes (301-308) that include a plurality of interactive nodes must be performed, the computer apparatus comprising a processor (102) for arranging and initiating the execution of the activity nodes in accordance with the defined sequence (p. 4 l. 8 – p. 5 l. 8), wherein each interactive node is arranged to allow a user to input data for use in the execution of an activity node (p. 7 ll. 5-25), the processor being arranged to analyse the user input data to determine the interactive node in the sequence of activity nodes to which the user input data is associated (p. 13 ll. 5-29, Figs. 1-3).

The invention claimed in claim 7 is directed to a method for implementing a workflow defined by a sequence in which activity nodes (301-308) that include a plurality of interactive nodes must be performed, the method comprising initiating the execution of the activity nodes in accordance with the defined sequence, wherein each interactive node is arranged to allow a user to input data for use in the execution of an activity node, and analyzing the user input data to determine the interactive node in the sequence of activity nodes to which the user input data is associated (p. 8. l. 6 – p. 14 l. 19, Fig. 3).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Issue 1: Whether claims 1-9 are unpatentable under 35 U.S.C. 103(a) over U.S. Pat. No. 6,298,356 to Jawahar et al. in view of U.S. Pat. No. 6,915,336 to Hanke et al.

Appellants note that for each ground of rejection which Appellants contest herein and which applies to more than one claim, such additional claims, to the extent separately identified and argued below, do not stand or fall together.

ARGUMENT

Issue 1: Whether claims 1-9 are unpatentable under 35 U.S.C. 103(a) over U.S. Pat. No. 6,298,356 to Jawahar et al. in view of U.S. Pat. No. 6,915,336 to Hankejh et al.

In section 3 of the final Office Action of June 19, 2006, the Examiner rejects claims 1-9 under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,298,356 to Jawahar et al. in view of U.S. Pat. No. 6,915,336 to Hankejh et al. In particular, the Examiner finds that Jawahar teaches all claim limitations, citing to various portions of Jawahar and categorically declaring that “‘*Help*’ button makes an active node an interactive node.” The Examiner then appears to acknowledge the hint of a shortcoming in his previous assertions by further declaring that “although Jawahar teaches implicitly a type of workflow in regards to users asking for the aid of an agent by initializing the “Help” button, there is no explicit teaching of a type of sequence as what is well known in the art as workflow.” However, the Examiner quickly cures this possibility of a shortcoming by further asserting that “Hankejh *more explicitly* teaches workflow in the regards to a type of sequence in which activities are processed” – i.e. Hankejh is more explicit than Jawahar, who is implicit, thereby rendering Hankejh more explicit than implicit. Regardless, the Examiner finally opines that it would have been obvious to the skilled person to combine Jawahar with Hankejh because “utilizing a schedule to answer user requests for aid gives the system the ability to not let users that have been waiting for aid to be forgotten by agents if they are not aided in a timely fashion, i.e. first come first served.”

In their last submission, Appellants explained why they are compelled to disagree with the Examiner’s understanding of these references. Specifically, and contrary to the Examiner’s understanding, Jawahar does not disclose or suggest analyzing a request to determine with which web page it is associated. Appellants very carefully and patiently explained that in view of the Examiner’s assertion that “‘*Help*’ button makes an active node an interactive node” (assertion unencumbered, as it were, by anything even hinting at support for this proposition in the disclosure of Jawahar) combined with his utter silence as to where Jawahar might show data input by the user, Appellants had to assume that the Examiner was of the view that by selecting the “help” button, the user inputs data in the system of Jawahar. However, even assuming *arguendo* that the help request sent when the “help” button is clicked corresponds to data input by the user, Jawahar does not disclose or suggest analyzing the request to determine with which

web page it is associated. The help request of Jawahar contains no information that relates it to what web page was accessed by the user when the “help” button was selected, as Jawahar instead provides a monitoring application installed in the browser of the user’s computer for determining what web page was accessed by the user when the “help” button is selected. Thus, Appellants further explained, Jawahar not only fails to teach the “processor being arranged to analyse the user input data to determine the interactive node in the sequence of activity nodes to which the user input data is associated” of claim 1 but, by teaching to determine the web page accessed when a request is placed without analyzing the request, Jawahar actually teaches away from such a processor. Appellants further explained that the help request of Jawahar is used to put an agent (i.e. human being) in communication with a user requesting help, not for the execution of the web page or of an activity node including the web page, and thus even assuming that the help request that is sent when the “help” button is selected would read on the claimed user data input, Jawahar nonetheless fails to disclose an “interactive node arranged to allow a user to input data *for use in the execution of an activity node*” as presently recited in claim 1.

Finally, Appellants noted, the disclosure of Hankejh alleged by the Examiner to teach “workflow in the regards to a type of sequence in which activities are processed” relates to a sequence of operations (user is placed in iSession queue or is introduced into an existing channel; Iserver Web serves the client Java applet HTML document to the user; etc...) executed for placing a user requesting access to a live session in an iSession queue so as to be able either to introduce the user in an iSession or, if no (human) agent is available, to give the user the options of 1) waiting; 2) scheduling an iSession for a later time; or 3) trying again later. Thus, Appellants explained, even if assuming for the sake of argument that one skilled in the art had for some undisclosed reason decided to combine Jawahar with certain selected aspects of Hankejh, such as this sequence of operations, the Examiner has nonetheless failed to show that this sequence of operations reads in any way on a sequence of activity nodes that include a plurality of interactive nodes, and in particular on a “*sequence in which activity nodes that include a plurality of interactive nodes must be performed*” as recited in claim 1.

In the final Action, the Examiner alleges to answer to each of Appellants’ arguments in sections 15-21, and is off to a running start right from section 15 wherein he categorically declares that it “is well known in the art that if something is “monitored” then it is being

analyzed.” The Examiner’s contortious – albeit convenient – bending of the English language is truly stupefying and at odds with, *inter alia*, The American Heritage® Dictionary of the English Language, Fourth Edition:

Monitor: v. To *keep track of* systematically with a view to *collecting information*.

Analyze: v. To examine methodically by *separating into parts* and studying their interrelations.

[emphasis added]

The Examiner’s apparent and inexplicable need to reject the present claims is certainly not sufficient reason to restructure the English language as may suit the interpretation he wishes to impose upon the prior art he may have at hand. If the Examiner has to reassign *ad hoc* the meaning of various terms of the English language in order to support his interpretation of the prior art, the Examiner has but two choices under the law – find other art, or allow the claims.

Section 15 of the final Action wraps up with citations to no less than six (6) CCPA decisions, all apparently aimed at teaching Appellants that the Examiner is allowed some latitude in making a conclusion of obviousness as based upon the common knowledge and common sense in the art. The Examiner, however, does not take the next logical – and, as also made abundantly clear by countless other CCPA decisions, necessary – step of providing *support* for what he asserts to be this “common knowledge and common sense.” The Examiner’s furious hand waving does not mask a complete and utter lack of support in the literature of the art for his holding of obviousness, and invoking the common knowledge and common sense does not magically make this requirement disappear nor satisfy it. The Federal Circuit (a somewhat higher authority than the CCPA), for instance, in deciding *In re Lee*, Fed. Cir. 00-1158, (January 18, 2002), clearly enunciated:

The determination of patentability on the ground of unobviousness is ultimately one of judgment. In furtherance of the judgmental process, the patent examination procedure serves both to find, and to place on the official record, that which has been considered with respect to patentability. The patent examiner and the Board are deemed to have experience in the field of the invention; however, this experience, insofar as applied to the determination of patentability, must be

applied from the viewpoint of "the person having ordinary skill in the art to which said subject matter pertains," the words of section 103. In finding the relevant facts, in assessing the significance of the prior art, and in making the ultimate determination of the issue of obviousness, the examiner and the Board are presumed to act from this viewpoint. Thus when they rely on what they assert to be general knowledge to negate patentability, that knowledge must be articulated and placed on the record. The failure to do so is not consistent with either effective administrative procedure or effective judicial review. The board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.

[emphasis added]

Appellants hereby invite the kind reader to divine any such articulation on the part of the Examiner, and respectfully submit that nonesuch is to be found on the record.

In section 16 the Examiner continues to flex his new-found lexicographer muscle by now asserting that as well as monitoring, "'determining' is 'analyzing' because for a system to make a determination on data it would have to process the data or otherwise known as "analyzing" the data to come to its determination." The Examiner's liberal use of quotation marks notwithstanding, The American Heritage® Dictionary of the English Language, Fourth Edition once again proves the Examiner convenient, but wrong:

Determine: v. Mathematics. To fix or define the position, form, or configuration of.

Logic. To explain or limit by adding differences.

Law. To put an end to; terminate.

Clearly, none of the above equate to examining methodically by separating into parts and studying their interrelations.

The Examiner's attempt at explaining his logic is equally fraught with problems, starting with the actual meaning of "to make a determination on data" – which completely escapes Appellants – and its relevance to the issues at hand. Claim 1 does not claim anything resembling the act of "to make a determination on data." What claim 1 does recite is analyzing data to

determine a node. There is no making a determination on data going on in claim 1 whatsoever. Furthermore – according to the Examiner – in order “to make a determination on data” one has “to process the data” which is apparently “otherwise known as ‘analyzing’ the data to come to its determination.” As par for the course for this Examiner, there is once again an utter dearth of support on the record for this truly mystifying (and irrelevant) pronouncement, none of which prevents the Examiner from basking in his own perceived cleverness by wrapping up section 16 with the grand announcement that “therefore, the Applicant has confirmed that the Prior art of Jawahar teaches their claims as presented.”

Unfortunately, the preceding are but a warm-up leading to Section 18, wherein the Examiner really lets loose in his purported reply to Appellants’ teaching-against argument: “Jawahar and Hankejh are very similar in nature and would require very little in alteration in order to combine the two inventions in an obvious manner.” Really? According to which skilled person in the art? As evidenced by which specific portion of either of these two references? What exactly does their alleged “similar nature” have to do with 35 U.S.C. §103? The Examiner goes on: “Applicant is taking what is intended for the purpose out of context.” The extent to which Appellants have to jump to even guess what this means are beyond preposterous, and the reader should not feel alone if finding him or herself asking “Huh?” What are Appellants taking? From which context? What purpose is it intended for? What is it? What does this mean? How are Appellants expected to provide a reasoned argument against this statement?

Unfortunately, there is more – we are not even half way through section 18. “This statement is also very broad in nature and doesn’t state as to what added hardware nor does it state where the additional applications are located, i.e., no need for additional applications on the client side, server side, intermediate side, etc.” Appellants are willing to suppose that “this statement” refers to their earlier argument that because Jawahar provides a monitoring application installed in the browser of the user’s computer for determining what web page was accessed by the user when the “help” button is selected, Jawahar not only fails to teach the “processor being arranged to analyse the user input data to determine the interactive node in the sequence of activity nodes to which the user input data is associated” of claim 1 but, by teaching to determine the web page accessed when a request is placed without analyzing the request, Jawahar actually teaches away from using such a processor. Why the “nature” of this statement

is very broad and more to the point, even if true, why this matters, are questions the Examiner does not waste time expounding upon. The rest of the Examiner's complaint that Appellants' argument "doesn't state as to what added hardware nor does it state where the additional applications are located, i.e., no need for additional applications on the client side, server side, intermediate side, etc." simply makes no sense and Appellants are loath to guess but really have no choice. Is the Examiner complaining that Appellants' argument does not detail the hardware requirements for implementing the invention – i.e. the hardware details of the claimed processor? If so, the answer is simple – why would it? The claim is intended to encompass solely the novel aspects of Appellants' invention, and any enablement required is to be found in the specification; if not found, then the proper rejection is to be raised under 35 U.S.C. §112, not §103. Or is the Examiner complaining that Appellants' argument does not dissect the hardware requirements of Jawahar? In which case the answer is equally simple – why would it? Regardless of intended meaning, the Examiner's manner of expression reduces Appellants to helplessly reiterating: what does this mean?

The Examiner plows on: "Furthermore, neither the statement nor the prior art of Hankejh state that their invention can only use their application. All that is stated is that with the invention there will be the 'ability' to immediately 'answer' the questions of those who are browsing." With this, the Examiner reaches a new height in creative interpretation of the United States Code. Since when is that which a reference does not disclose of any relevance to whether it renders a claim obvious or not? Is the Examiner truly operating under the assumption that a reference can be *assumed* to disclose that which it does not expressly disclaim? As for "the statement" not limiting the invention to "only use their application," Appellants ask (wearily): what? "The statement" pointed out to the Examiner that the very purpose of Hankejh (such as making businesses able to immediately answer the questions of those who are browsing their site without the assistance of an additional application) relates to suppressing the need for an application such as described in Jawahar, and thus directly teaches against the Examiner's purported combination of Hankejh with Jawahar. Is the Examiner complaining that Appellants' argument did not allege that Hankejh limits his invention to implementing without the use of a monitoring application? If so, the answer is – the reader can probably guess it – why would it? What relevance would it have whether Hankejh specifically states that a monitoring application

of the type employed by Jawahar cannot be used? Not specifically prohibiting something is not the same as affirmatively stating that it can be used. Teaching a manner of accomplishing a goal without the use of that something is, however, *teaching the skilled person against* the desirability of investigating way of accomplishing that goal with the use of that something. The Examiner is clearly, hopelessly confused by the difference between these two concepts – much to Appellants' continuing detriment.

Finally, we arrive at section 21 where the Examiner purports to answer Appellants' argument that regardless of the utter lack of motivation to combine Jawahar in any way with Hankejh on the face of either document or in the general skill in the art, the Examiner has also completely failed to show that the sequence of operations disclosed by Hankejh – even if somehow, magically, implemented in Jawahar - reads in any way on a sequence of activity nodes that include a plurality of interactive nodes, and in particular on a “*sequence in which activity nodes that include a plurality of interactive nodes must be performed*” as recited in claim 1. The Examiner starts off rather self-righteously by declaring that he “has shown numerous times that the sequence of operations reads on a sequence of activity nodes that include a plurality of interactive nodes, and in particular on a ‘sequence in which activity nodes that include a plurality of interactive nodes must be performed’.” In support of this declaration, the Examiner begins to count off: “Firstly, as shown in figure one of Jawahar, there are multiple Agents and clients and with each client having the ability to contact an agent and become an interactive node is very apparent in the prior art.” Be this as it may, where in figure one are these alleged interactive nodes shown to be **in a sequence in which they must be performed**? Where is there any type of sequence shown anywhere in Jawahar? Clearly, nowhere – the Examiner himself states in section 4 that “there is no explicit teaching of a type of sequence” in Jawahar and furthermore introduces Hankejh for the sole purpose of allegedly teaching a workflow sequence. Thus, the Examiner’s “firstly” argument is clearly pointless and not probative at all of the issue at hand.

There is no “secondly” in the Examiner’s argument, as he wraps up by offering that “Furthermore, Applicant NEVER states in the independent claims what the ‘sequence’ is or could be which therefore leaves a broad interpretation of the claim language.” Indeed. A quick trip to the dictionary would have informed the Examiner that “sequence” is commonly defined as ‘a following of one thing after another.’ Actually, most fourth-graders could have informed the

Examiner of the very same. Thus, the question arises, exactly how broad is the interpretation “left” by Appellants in claim 1?

Figure one of Jawahar is reproduced below. In the Examiner’s interpretation, customers 22 and 24 read upon Appellants’ interactive nodes, and apparently the failure of claim 1 to define ‘sequence’ “leaves a broad interpretation” that somehow finds customers 22 and 24 in the below figure as being arranged in a sequence in which they must be performed. It is beyond painfully clear that this is absolutely wrong.

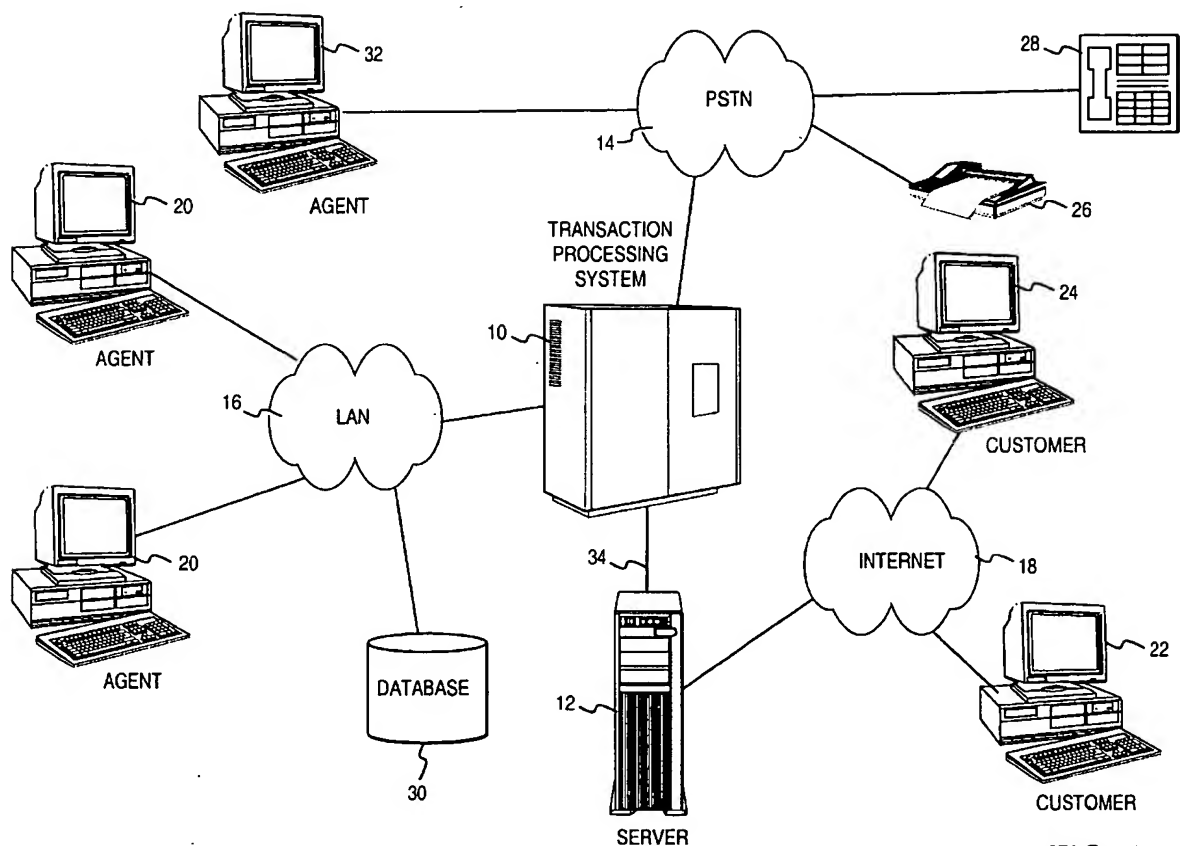


FIG. 1

Appellants apologize to the reader for the long strange trip it’s been, but submit that the Examiner’s alleged responses to Appellants’ numerous arguments for the patentability of the present claims border on the nonsensical and are nearly impossible to argue with in a reasoned,

logical manner. Appellants thus surmise the gist of this Appeal: claims 1-9 are novel and nonobvious over the art on record because

- (1) the two prior art documents on record, alone or in combination, do not disclose all claimed limitations such as, *inter alia*, an interactive node arranged to allow a user to input data for use in the execution of an activity node, a sequence in which such nodes must be performed, and a processor arranged to analyse the user input data to determine the interactive node in the sequence of activity nodes to which the user input data is associated;
- (2) the alleged combination of the two prior art documents on record finds no support or motivation either on the face of either of these documents nor in the knowledge generally available to those skilled in the art as placed on the record by the Examiner; and
- (3) the alleged combination of the two prior art documents is not workable because each of the references can most reasonably be understood as teaching away from the approach taken by the other reference, and thus there is no reasonable expectation of success to be found on the face of either reference even if one skilled in the art undertook the unmotivated task of trying to combine the references in the manner alleged by the Examiner.

To make it really short, the Examiner has failed to meet his burden any one of the three prongs set forth in MPEP §2142.

Claims

1. A computer apparatus for implementing a workflow defined by a sequence in which activity nodes that include a plurality of interactive nodes must be performed, the computer apparatus comprising a processor for arranging and initiating the execution of the activity nodes in accordance with the defined sequence, wherein each interactive node is arranged to allow a user to input data for use in the execution of an activity node, the processor being arranged to analyse the user input data to determine the interactive node in the sequence of activity nodes to which the user input data is associated.

2. A computer apparatus according to claim 1, wherein the processor is arranged, in response to the analysis, to initiate execution of the associated interactive node such that if the user data is associated with an interactive node that has been executed the interactive node is re-executed.

3. A computer apparatus according to claim 2, wherein the processor is arranged to compensate executed activity nodes that follow in the defined sequence from the re-executed interactive node.

4. A computer system comprising a computer apparatus according to claim 1 coupled, via a network, to a second computer apparatus, the second computer apparatus having a user interface

to allow a user to input data for an interactive node.

5. A computer system according to claim 4, wherein the network is the internet.

6. A computer system according to claim 5, wherein the user interface is an internet application allowing sequential movement between web pages.

7. A method for implementing a workflow defined by a sequence in which activity nodes that include a plurality of interactive nodes must be performed, the method comprising:

initiating the execution of the activity nodes in accordance with the defined sequence, wherein each interactive node is arranged to allow a user to input data for use in the execution of an activity node, and

analyzing the user input data to determine the interactive node in the sequence of activity nodes to which the user input data is associated.

8. A method according to claim 7, further comprising initiating, in response to the analysis, the execution of the associated interactive node such that if the user data is associated with an interactive node that has been executed the interactive node is re-executed.

9. A method according to claim 8, further comprising compensating executed activity nodes that follow in the defined sequence from the re-executed interactive node.

U. S. Appln. No. 10/005,898

Brief on Appeal dated November 15, 2006

In support of Notice of Appeal submitted September 19, 2006

Evidence Appendix Page B-1

There is no evidence submitted with the present Brief on Appeal.

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Related Proceedings Appendix Page C-1

There are no other appeals or interferences related to the present application.